



BOMA Canada to appeal forced access decision of CRTC: Private property rights at stake

OTTAWA – July 2003 - The Building Owners and Managers Association of Canada (BOMA Canada) has joined forces with the Canadian Institute of Public and Private Real Estate Companies (CIPPREC), to seek leave to appeal to the Federal Court of Appeal, elements of the recent Canadian Radio-television and Telecommunications Commission (CRTC) Telecom Decision 2003-45, that claims CRTC jurisdiction over private property, and threatens forced access orders against owners of multi-tenanted properties in Canada. The CRTC claims in Decision 2003-45, released June 30th 2003, that it has the power to force access to any dwelling in Canada on behalf of telecom companies, although it only threatens to do so against multi-tenant buildings at this time.

"BOMA Canada is pleased to continue this successful partnership with CIPPREC on this crucial issue, and we believe that the joint efforts of the two organizations will send a powerful message to regulators on behalf of the commercial real estate industry", says BOMA Canada President, Margaret Dreher, RPA.

The decision prohibits building owners from charging access fees or forming exclusive or preferred access arrangements with a telephone company. It gives all local telephone companies the right to enter a multi-tenanted building to install, replace or upgrade their facilities, and also ensures access to install wiring and associated telecom facilities in buildings under construction. The ruling further states that the CRTC will order building owners to comply with these guidelines, if necessary – leading BOMA Canada and CIPPREC to question if the CRTC really has such authority.

Michael Brooks, Executive Director of CIPPREC said "Competitive markets and end user choice are important in any market, but they should not evolve at the expense of private property rights. Landlords have to consider security, building safety, fire protection, the allocation of scarce space, future tenant needs, prudent cost and property management and a host of other matters in determining and regulating access. The CRTC has no expertise in these areas, and neither do the telephone companies."

BOMA Canada and CIPPREC, in the wake of Decision 2003-45, have committed to engage in bilateral discussions with all carriers on the non-contentious elements of Decision 2003-45, so that their tenants have a reasonable choice of carriers in buildings where there is competitive demand, under reasonable terms and conditions. Some telecom providers have in the past been poor custodians of telephone space in buildings, and talks to clean up these facilities as well as controlling the access of strangers to key parts of buildings will be part of the bilateral discussions with the carriers. "We're confident that we can further facilitate multiple carriers being housed in our buildings while also reducing some of the negative impacts of telecommunications competition on our private property. This is about what our tenants as consumers want, not what the suppliers want", said Eric Yapp, Chair, BOMA Canada Telecommunications Task Force. It was noted that, unfortunately, no tenants were involved in the CRTC PN 2000-124 proceeding leading up to Decision 2003-45, and much of the evidence on customer demand for competitive services went in without disclosure to other participants.

Decision 2003-45 arose out of the CRTC-initiated public notice process PN 2000-124, reviewing terms and conditions for access to multi-tenant buildings by the new competitive local exchange carriers (CLEC's). PN 2000-124 focused on how to make it easier for these CLECs to make inroads on the dominant market position of the giant incumbent phone companies. In Decision 2003-45, the CRTC has set out guidelines, favourable to these CLECs, for access negotiations between landlords and CLECs (and between CLECs and the incumbent phone companies) in delivering facilities-based local phone service to tenants of multiple tenant buildings, to try to reduce this dominance, all based on the presumption that wide facilities-based competition would force down the price of local phone services to commercial and residential tenants. To date, this competition has only appeared in major Canadian cities, and mostly the downtowns. If the guidelines aren't followed, the CRTC has said it is prepared to force access.

Even though BOMA Canada and CIPPREC have sought leave to appeal elements of the ruling, ensuing regulatory amendments are not expected anytime soon. Nor does the CRTC move quickly – Decision 2003-45 comes out of a consultation process that occurred in 2000.